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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1992

Addendum

YUGOSLAVIA

[20 January 1998]

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I. BACKGROUND INFORMATION

1. The Federal Republic of Yugoslavia (FRY) comprises Serbia and Montenegro as its member Republics; it is situated in south-east Europe and occupies the central part of the Balkan peninsula, covering an area of 102,173 square kilometres. According to the latest statistics (the 1991 census and the estimates based on the natural birth rate) Yugoslavia has a population of 10,574,000.

2. Yugoslavia is a multiethnic, multilingual and multiconfessional State. Serbs and Montenegrins account for the largest part of the population, a total of 67.6 per cent, whereas members of various minorities account for nearly a third (32.4 per cent) of the total.

3. As regards the general political structure in Yugoslavia, the core document (HRI/CORE/1/Add.40 of 22 July 1994, paras. 23-65) should be consulted.

4. Yugoslavia signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 April 1989 and ratified it on 20 June 1991. The Law Ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was published on 2 August 1991 (Official Gazette of the SFRY - International Treaties, No. 9/1991) and came into effect on 10 August 1991. Yugoslavia deposited the instruments of ratification of the Convention with the Secretary-General of the United Nations on 10 September 1991. On the occasion of the ratification of the Convention, the Assembly of Yugoslavia also issued the following declaration:

> "Yugoslavia recognizes, in accordance with paragraph 2 of article 21 of the Convention, the jurisdiction of the Committee against Torture to receive and consider communications in which one Member State claims that another Member State is in default on its obligations under this Convention.
>
> "In accordance with paragraph 1 of article 22 of the Convention, Yugoslavia recognizes the jurisdiction of the Committee against Torture to receive and consider communications submitted to it by or on behalf of individuals who are under its jurisdiction and who claim to be victims of violations of the provisions of the Convention by a Member State."

5. The Constitution of the Federal Republic of Yugoslavia (Official Gazette of FR Yugoslavia No. 1/1992) devotes one third of the constitutional text to the freedoms, rights and duties of individuals and citizens (sect. II, arts. 19-68) and contains, in conformity with international standards, the complete corpus of human rights and freedoms.

Special attention is drawn to provisions of the Constitution as stated in the following articles:

Article 21, para. 1: "Man's life shall be inviolable."

Article 22: "The inviolability shall be guaranteed of man's physical and mental integrity, his privacy and personal rights. Man's personal dignity and security shall be guaranteed."

Article 23, paragraph 1: "Everyone shall have the right to personal freedom."

Article 25:

"Respect for the human personality and human dignity shall be guaranteed in criminal and in any other proceedings in the case of deprivation or restriction of liberty and during the enforcement of a penalty.

"Any violence against a person deprived of liberty or whose liberty has been restricted, as well as any extortion of a confession or statement shall be forbidden and punishable. No one may be subjected to torture, degrading treatment or punishment.

"Medical and other experiments on man without his permission shall be forbidden."

Article 31, paragraph 1: "Dwellings shall be inviolable."

Article 32, paragraph 1: "Secrecy of mail and of other means of communication shall be inviolable."

Article 33, paragraph 1: "Protection of personal data shall be guaranteed."

Article 35: "Freedom of conviction, conscience, thought and public expression of views shall be guaranteed."

Article 36, paragraph 1: "Freedom of the press and other mass media shall be guaranteed."

Article 38, paragraph 1: "Censorship of the press and other mass media shall be prohibited."

Article 39: "Freedom of speech and public address shall be guaranteed."

Article 40, paragraph 1: "Citizens shall be guaranteed freedom of assembly and other peaceful gatherings, subject to prior notification to the competent authority."

Article 41, paragraph 1: "Citizens shall be guaranteed freedom of political, trade union and other association and action, subject to registration with the competent authority."

Article 43:

"Freedom of belief, private or public profession of religion and practising of religious rites shall be guaranteed.

"No one shall be bound to declare their religious convictions."

Article 45:

"Freedom to declare one's national affiliation and culture as well as freedom to use one's own language and script is guaranteed.

"No one shall be bound to declare their national affiliation."

6. In the context of the drafting of this report, we would like to stress, among the above-mentioned as well as other constitutional provisions on the freedoms, rights and duties of individuals and citizens, the provisions of paragraph 3 of article 25 ("No one may be subjected to torture, degrading treatment or punishment"), which has been taken from article 7 of the International Covenant on Civil and Political Rights. A formulation identical to that of the above provision of the Constitution of Yugoslavia is also found in the Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 1/1990), in article 26, paragraph 2, as well as in the Constitution of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, No. 48/1992), in paragraph 3 of article 24. The Constitutions of the Republics of Serbia and Montenegro also contain arrangements identical or similar to those in the Constitution of Yugoslavia in respect of the entire corpus of freedoms, rights and duties of individuals and citizens.

7. Protection against torture and/or degrading treatment or punishment is laid down primarily in the criminal legislation of Yugoslavia, in both substantive and adjective law. The Criminal Code of Yugoslavia, the Criminal Code of Serbia and the Criminal Code of Montenegro are implemented in Yugoslavia at present. The adoption of a single Criminal Code for Yugoslavia, is under way to regulate, on a comprehensive and uniform basis, for the entire territory of Yugoslavia, all issues falling within the domain of substantive criminal law. The Law on Criminal Procedure is uniform for the entire territory of Yugoslavia. Although the term "torture" does not exist in the criminal legislation of Yugoslavia, protection against torture, ill-treatment and/or degrading treatment and punishment has been regulated under a number of statutory provisions which describe and sanction acts encompassed by the Convention.

8. The Criminal Code of Yugoslavia (1976) contains a number of criminal offences with sanctions envisaged for torture and/or degrading treatment and punishment (arts. 174-199). We draw attention to the following criminal offences in particular:

Article 189: Unlawful deprivation of freedom

"Whosoever in an official capacity unlawfully detains, keeps in detention or in other ways restricts the freedom of movement of another person, shall be punished by imprisonment from three months to five years.

"If the unlawful deprivation of liberty exceeds 30 days or is carried out in a cruel way, or if the unlawful deprivation of liberty seriously impairs the health of the person concerned or entails other serious consequences, the perpetrator shall be punished by imprisonment between one and eight years.

"If the person unlawfully deprived of liberty lost his/her life on that account, the perpetrator shall be punished with imprisonment of at least three years."

Article 190: Extortion of depositions

"Whosoever in an official capacity resorts to force, threat or other impermissible means or impermissible way with the intention of extorting a deposition or other statement from the accused, witnesses, experts or other persons, shall be punished by imprisonment from three months to five years.

"If the extortion of the deposition or statement is attended by severe violence or if, due to the extortion of a statement, particularly grave consequences have arisen for the accused in criminal proceedings, the perpetrator shall be punished by imprisonment of at least one year."

Article 191: Maltreatment in the discharge of office

"Whosoever in an official capacity ill-treats, insults or generally treats another person in a way outrageous to human dignity, he/she shall be punished by imprisonment from three months to three years."

In addition to the above criminal offences, in our view the following also need to be pointed out: abuse of office (art. 174); dereliction of duty (art. 182); infringement upon the inviolability of dwellings (art. 192) and unlawful search (art. 193).

9. The Criminal Code of Serbia (1977), chapter 8, "Criminal Offences Against the Freedoms and Rights of Man and the Citizen", contains 18 criminal offences (arts. 60-76) with formulations similar to those in the Criminal Code of Yugoslavia, namely: unlawful deprivation of freedom (art. 63), extortion of statements (art. 65), ill-treatment in the line of duty (art. 66). The Criminal Code of Serbia, like the Criminal Code of Montenegro sanctions as a criminal offence the abuse of office to carry out intercourse or indecent assault (art. 107).

10. The Criminal Code of Montenegro (1993) also contains formulations similar or identical to those in the Criminal Code of Yugoslavia and the

Criminal Code of Serbia, namely: unlawful deprivation of freedom (art. 45), extortion of statements (art. 47), ill-treatment in the line of duty (art. 48) and the abuse of office to carry out intercourse or indecent assault (art. 90).

11. Even though the same or similar formulations of the above criminal offences feature in the Criminal Code of Yugoslavia, the Criminal Code of Serbia and the Criminal Code of Montenegro, we wish to emphasize that the provisions of the Criminal Code of Yugoslavia refer to the officials in the federal bodies, while the mentioned provisions of the republican criminal codes apply to any other persons acting in an official capacity.

12. The Constitution of Yugoslavia contains the basic arrangements concerning deprivation of liberty, detention and the right to counsel, as follows:

Article 23:

"Everyone shall be entitled to personal freedom.

"No one may be deprived of liberty except in cases and by the procedure specified by federal statute. Whosoever has been deprived of liberty shall be immediately informed in his/her own language or a language that he/she understands, of the reasons therefore and shall have the right to demand the authorities to inform his next of kin of such deprivation of liberty. A person deprived of liberty must be informed thereof, while he/she is under no obligation to make any statements. A person deprived of liberty shall have the right to a defence counsel of his/her own choosing. Any unlawful deprivation of liberty shall be punishable."

Article 24:

"A person for whom there are grounds for suspicion that he has committed a criminal offence may be detained and held in detention on the basis of a decision of the competent court of law, providing it is indispensable for the conduct of criminal proceedings."

"A written order with a statement of grounds must be served on a person detained at the moment of detention or not later than 24 hours thereafter. The person detained may lodge an appeal against this order, which must be decided upon by the court within 48 hours. The duration of detention shall be kept within the shortest necessary period of time.

"Detention ordered by a court of first instance shall be in force not more than three months as of the date of detention. A court of higher instance may extend this period for another three months. If until the expiry of these time limits no indictment has been filed, the accused shall be released."

Article 29, paragraph 1:

"Every person shall be entitled to defence and to retain a defence counsel to act on his behalf before the court or other body conducting the proceedings."

13. The Law on Criminal Procedure (1976) is applicable throughout Yugoslavia. Article 10 of the Law contains the following general provision: "Any extortion of a confession or statement from an accused person or any other person involved in the proceedings shall be forbidden and punishable." The Law lays down the following stages of the criminal procedure: (a) Pre-trial procedure (i) investigation and (ii) indictment; and (b) main procedure: (i) main hearing and (ii) action upon legal remedies. Not every criminal case has to go through all these stages (e.g. legal remedies may be waived). The Law on Criminal Procedure specifies the legal course of the entire criminal proceedings and precludes torture or degrading punishment and treatment. On this occasion we draw attention to the provisions of the Law on Criminal Procedure referring to detention (arts. 190-200) and treatment of detainees (arts. 201-205) which meets the standards of the Convention and other international documents, primarily the Standard Minimum Rules for the Treatment of Prisoners.

Detention

14. Articles 190 and 191 of the Law on Criminal Procedure set out the basic prerequisites and conditions for ordering detention (detention may only be ordered in keeping with the conditions precisely defined in this law). Articles 192, 194, 195 and 196 specify which bodies are competent to order detention (as a rule detention is ordered by the investigating magistrate in charge, in close cooperation with law enforcement bodies and the trial chamber). Articles 193 and 200 regulate the rights of persons deprived of liberty (the right to a defence counsel and to assistance in retaining defence counsel, keeping in detention for the shortest time possible, informing the family). Articles 198 and 199 regulate the expiry of detention (approval of the investigating magistrate and public prosecutor; in the absence of such approval the decision revoking the detention order is brought by the trial chamber). Article 197 regulates the duration of detention (one month, on the basis of a magistrate's order, which may be extended for another two months on the basis of a decision of the trial chamber; however, if the proceedings are being conducted for a criminal offence punishable by a sentence of five years of imprisonment or a more severe sentence, detention may be extended for another three months on the basis of a decision of the chamber of the republican Supreme Court).

15. In practice, detention is not ordered frequently. For example, in the five-year period from 1991 to 1995, persons accused of having committed one of the 59 criminal offences from the group of criminal offences against the freedoms and rights of individuals and the citizens (24 criminal offences in the Criminal Code of Yugoslavia, 18 offences in the Criminal Code of Serbia and 17 offences in the Criminal Code of Montenegro), detention for a total of 218 cases was ordered on the basis of criminal charges. These criminal offences have been described, i.e. some of them have been cited in paragraphs 8-10 of this report. Persons accused of these offences were ordered to be detained, as a rule, between 3 and 30 days, with detention exceeding 30 days only in individual cases.

Treatment of detainees

16. Article 201, paragraph 1, states: "During detention, neither the personality nor the dignity of an accused may be offended." Article 202 stipulates an uninterrupted eight-hour resting period every 24 hours as well as the right of a detainee to be self-sustaining in food, to wear his/her own clothes, to use his/her own bed-linen and to be supplied with newspapers and books. Article 203 allows visits by family members, doctors and other persons to detainees, as well as correspondence, all supervised by an authority and/or person in charge of the investigation. Article 204 allows the possibility to inflict disciplinary punishments on detainees for violations of discipline, and article 205 governs the manner in which the President of the court exercises supervision over detainees.

Investigative activities

17. A search of an apartment and a person (arts. 206-210) shall be carried out only if there is a probability of finding evidence of a criminal offence; on the basis of a valid warrant or a summons issued to the owner of an apartment or other persons living in it, or neighbours, to be present. An apartment may be searched in the presence of two adult citizens as witnesses. There is an obligation to carefully search an apartment or a person. A police officer may search an apartment even without a warrant if somebody cries for help, if that is indispensable in order to catch a perpetrator in the act, if it is necessary to protect the safety of life or property. A police officer may search a person even without a warrant in cases of taking him/her to a police station or an arrest, where there is reasonable suspicion that the perpetrator possesses weapons or instruments for an attack, that he will conceal or destroy an object which can serve as evidence in criminal proceedings. After each search without a warrant, police officers have to submit a special report.

18. Articles 211-215 cover temporary seizure of objects. Articles 216-217 cover procedure with respect to suspicious objects.

19. In the interrogation of an accused (arts. 218-224), the personality of the accused shall be fully respected; the accused must not be subjected to coercion, threats or other similar means, nor to deception with purpose of obtaining his statement or confession. In the questioning of witnesses (arts. 225-237), there is an obligation to respond to a summons to testify, but at the same time it must be stated who is not obliged to testify. A witness has the right not to answer to certain questions. The summons must be served in an orderly fashion and witnesses questioned correctly.

20. During the investigation (arts. 238-240), the reconstruction of events must not be performed in a manner offensive to public order and morals or dangerous for people's lives or health.

21. Articles 241-260 cover the giving of an expert opinion.

II. INTERNATIONAL INSTRUMENTS

22. Article 16 of the Yugoslav Constitution lays down that: "The Federal Republic of Yugoslavia shall fulfil in good faith the obligations contained in international treaties to which it is a Contracting Party. International treaties ratified and promulgated in conformity with the present Constitution and generally accepted rules of international law shall be a constituent part of the internal legal order." The Law on Ratification of International Treaties is adopted by the Federal Assembly at the proposal of the Federal Government, and the President of the Federal Republic of Yugoslavia issues documents on confirmed (ratified) international treaties. Duly ratified and published international treaties are a constituent part of the internal legal order and as such can be immediately enforced.

23. Yugoslavia has ratified a large number of international treaties, especially in the field of human rights. These include: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Suppression and Punishment of the Crime of Apartheid; International Convention against Apartheid in Sports; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Political Rights of Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Slavery Convention; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; Convention relating to the Status of Stateless Persons; Convention relating to the Status of Refugees and its Protocol.

III. COMPETENT AUTHORITIES

Courts of law

24. Courts in Yugoslavia protect the freedoms and rights of citizens, the rights and interests laid down by law, constitutionality and legality. These judicial functions are performed by the courts of general jurisdiction and by specialized courts.

25. The courts considering cases involving protection of human rights and freedoms are, as a rule, courts of general jurisdiction, namely: municipal courts in the Republic of Serbia and basic courts in the Republic of Montenegro and district courts in the Republic of Serbia, and higher-instance courts in the Republic of Montenegro. There is a supreme court in each of the member republics; the Federal Court is a judicial authority of the federal State. When cases involve a criminal offence against military personnel and certain criminal offences committed by military personnel, they are tried before military courts. The Yugoslav legal system enables everyone to take legal action before the Federal Constitutional Court in order to annul a decision or prohibit an act violating the freedom or right guaranteed by the Constitution.

26. Municipal, i.e. basic, courts, as first-instance courts, are competent not only in civil, labour relations and other cases, but also in criminal cases, to try criminal offences which, under the law, entail as a main sentence a fine or imprisonment up to 10 years, unless the law envisages a district court, i.e. higher-instance court, as competent for such cases; to try criminal offences which fall within their competence according to a special law; to conduct investigations, consider appeals against rulings of an investigating judge and objections against indictments for criminal offences within their jurisdiction; to decide disputes involving indemnification against persons unjustly convicted and arbitrarily arrested; to carry out proceedings and to put forward proposals following requests for the quashing of verdicts and for the termination of security measures or for the termination of the legal consequences of a sentence; and to adopt decisions on those matters when pronouncing such a sentence or a measure. In criminal proceedings such courts sit in a three-member panel, consisting of a judge and two lay-assessors, unless they try cases involving criminal offences for which the statutory sentence is one year in prison or a fine (such cases are tried by a single judge). Investigation is entrusted to an investigating judge, and only exceptionally to police forces (mostly upon orders of an investigating judge), while appeals against a decision of the investigating judge are decided upon by the three-member panel.

27. District, i.e. higher-instance, courts are primarily courts of appeal. In special cases spelled out by the law, these courts are also first-instance courts, namely when they try criminal offences for which a statutorily defined sentence is imprisonment for more than 10 years or capital punishment, as well as criminal offences which fall within their jurisdiction under the law; when they conduct an investigation, consider appeals against a decision of an investigating judge, consider objections against indictments for criminal offences which fall within their jurisdiction; decide upon a request for the quashing of a verdict based on a court ruling and an appeal for the termination of security measures or for the termination of the legal consequences of a sentence relating to the ban on acquiring certain rights, if the verdict or the measure were pronounced by that court; carry out proceedings and decide upon a request for extradition of convicted or indicted persons.

28. As the highest courts, which, by rule, act upon legal remedies lodged against lower-instance court decisions, there are supreme courts in the Republic of Serbia and the Republic of Montenegro. In the majority of cases, they serve as the last-instance courts for judicial proceedings, i.e. at the level of the judicial authorities in the member republics. A supreme court is, inter alia, competent to: decide on regular legal remedies against decisions of district, i.e. higher-instance, courts; decide on extraordinary legal remedies against valid decisions in statutorily defined cases; decide on third-degree appeals against second-degree verdicts of the republican courts; decide on legal remedies against decisions of the supreme courts' Chamber. It should be pointed out in particular that a supreme court is competent to decide in the first degree on requests for protection of the freedoms and rights laid down in the Constitution, if such freedoms and rights are violated by a final individual act, and there is no other judicial protection provided for such cases.

29. We wish to emphasize in particular that there may be three-degree proceedings only providing that a second-degree court pronounces capital punishment or a sentence of 20 years of imprisonment or if it confirms a verdict by a first-degree court pronouncing such a sentence. The proceedings will also be three-degree proceedings when a second-degree court modifies a verdict of a first-degree court acquitting the defendant, and pronounces its own verdict convicting him.

30. The Federal Court is a federal State's court, the jurisdiction of which is laid down in Yugoslavia's Constitution, the Federal Court Act and laws on judicial proceedings (criminal proceedings and litigations). As regards the jurisdiction of this court in the field of protection of human rights and freedoms, this court decides on the use of an extraordinary legal remedy against court decisions in the member republics and decisions of military courts relating to the enforcement of the federal law and on the legality of final administrative enactments of the federal authorities.

31. In addition to courts of general jurisdiction, military courts also have a certain degree of jurisdiction in the protection of human rights and freedoms. Military courts in Yugoslavia are part of the judicial system; they apply the same procedures and substantive regulations which are applied by the courts of general jurisdiction, namely, they are not, as in most countries, a separate system of courts before which special legal acts are applied. These courts exist in the country in time of both peace and war. Military courts are, inter alia, responsible for pronouncing judgements for all criminal offences committed by military persons; prisoners of war - for all offences committed by them as prisoners of war; civilians who serve as civil persons in the Yugoslav Army - for offences committed by them in their line of duty or in connection with their line of duty.

Administrative authorities

32. Administrative authorities are particular State authorities responsible for issues covered by the Convention. Reference is made to the Federal Ministry of Justice, which has the Human Rights Sector and is responsible for issues relating to the exercise of freedoms and rights of individuals and citizens established by the Constitution, including rights of national minorities; monitoring and work intended to develop and promote the legal system in the field of human rights; administrative supervision over the implementation of federal laws and other federal regulations in the field of exercise and protection of human rights; monitoring of the situation in the fields of the freedoms and rights of specific population categories; monitoring of the implementation of the adopted international acts and documents in the field of freedoms and rights, including national minority rights, and preparation of related reports; as well as other affairs within the scope of work of the Federal Ministry of Justice in the field of human rights. Within this overall scope of activity, the Federal Ministry for Foreign Affairs, the Federal Ministry for Internal Affairs and the Ministries of Justice and Police of the two republics have corresponding competencies over the issues covered by the Convention.

Parliamentary bodies

33. The Federal Assembly has a permanent committee for the exercise of freedoms, rights and duties of individuals and citizens which, inter alia, monitors the implementation and protection of freedoms, rights and duties established by the Constitution, laws, other regulations and general enactments; monitors the implementation of obligations assumed by Yugoslavia by the signature and ratification of international acts on human rights and freedoms; gives opinions and proposals for more complete and efficient implementation and protection of the established freedoms and rights of man and citizen.

34. Also, the Federal Assembly and the republican assemblies have permanent parliamentary committees for representations and proposals of citizens. These committees consist of representatives of the parliamentary political parties. Their main responsibility is to look into citizens' representations, petitions, proposals and complaints and to propose to the competent assembly chamber and other competent authorities the measures for resolving the respective issues. Thus, for example, the Committee for Representations and Proposals of the Federal Assembly received in 1996 a total of 1,400 representations addressed to the highest authorities of Yugoslavia. Under article 44 of the Constitution, a citizen is entitled to publicly criticize the work of State and other authorities and organizations and officials, to submit to them representations, petitions and proposals and to receive an answer upon request. Of the 1,400 citizen representations in 1996, 928 were submitted for the first time, 272 were resubmitted representations and 200 citizens were received directly and submitted their representations verbally.

35. Considering that the largest number of representations was submitted by citizens who had addressed the federal authorities for the first time it is noteworthy that 528 of them were addressed to the President of Yugoslavia, 379 were submitted to the Federal Assembly and 21 to the Federal Government.

36. Analysing the contents of these representations, the largest number (297) concerned problems of a property/legal nature or administrative and legislative problems, while the number of representations in the fields of socio-economic and socio-political relations was somewhat lower and totalled 263.

IV. COURT AND POLICE PROCEDURES

37. The police in Yugoslavia act on the basis of law and legal enactments which, inter alia, establish the terms and conditions for the use of coercion, as well as the use of other powers in the line of duty. The said regulations also include provisions which sanction all measures, actions and acts which would be contrary to the provision of the Convention. If a police officer acts contrary to the said regulations, disciplinary and other measures are taken, including termination of employment, but criminal charges can also be brought. The following table shows the number of complaints brought for specific criminal offences in 1991-1996.

Offence	Complaints	Indictments	Sentences
Illegal arrest	489	174	108
Extortion of statement	197	64	23
Abuse in the line of duty	1 527	468	234

38. Thus, for example, in the 1993-1996 period, the Ministry of Internal Affairs of the Republic of Serbia brought 9 criminal charges against 12 authorized officers, based on reasonable suspicion that they committed 10 criminal offences of abuse in the line of duty, one criminal offence of rape and indecent assault by abusing their official position and one criminal offence of illegal arrest. Out of this number, three criminal charges were brought in 1993 against four police officers, four criminal charges were brought against the same number in 1994, and one in 1995 and 1996 each, against two police officers. Criminal charges were also brought against 11 uniformed workers and one criminal police inspector.

39. Most cases concern irregular use or overstepping of powers relating to the use of coercion - physical force or rubber stick, rather than acts with elements of torture. In four cases, coercion was used in official premises during the interviews. Of the total number of reported persons, seven were convicted in criminal proceedings. All the officers of the Ministry of Internal Affairs of Serbia who were found guilty were sentenced to serve time in prison.

40. In addition to the criminal charges, disciplinary procedures were also undertaken against 10 reported officers. In two cases, employment was terminated, three were fined, one was relocated to another job, one was released from disciplinary responsibility. All officers who underwent disciplinary proceedings were suspended from this Ministry before the end of the proceedings. Two officers terminated employment by agreement.

41. In addition to the legal measures taken ex officio by the Ministry of Internal Affairs of the Republic of Serbia, the injured parties brought criminal charges directly to the competent public prosecutor's offices. Citizens brought 230 criminal charges against 300 authorized officers of this Ministry, in most cases for the criminal offences of abuse in the line of duty (280), extorted testimonies (44) and illegal arrest (15). Almost all cases were based on unfounded reports and complaints of citizens under criminal prosecution. The competent public attorney offices were duly informed about the proceedings undertaken and in most cases rejected the charges as unfounded.

42. On the grounds of abuse and overstepping of powers in the use of coercion, the Ministry of Internal Affairs of the Republic of Montenegro pronounced measures of termination of employment as follows: 4 terminations in 1993; 15 in 1994; 18 in 1995 and 7 in 1996. In the 1993-1996 period, the Ministry brought five criminal charges against its employees for extortion of testimonies.

V. INFORMATION ON ARTICLES 2-16 OF THE CONVENTION

Article 2

43. The provisions of article 2 of the Convention have been basically implemented and consistently carried out in the legal system of Yugoslavia. Constitutional and legal provisions quoted in this report, as well as action taken by the competent authorities as described in this report, clearly show the measures taken for the purposes of protection against torture and/or degrading punishment and treatment.

Article 3

44. The Constitution of Yugoslavia as well as the relevant regulations contain provisions relating to the expulsion and extradition of Yugoslav citizens and aliens. We quote the following constitutional and legal arrangements:

Article 17, paragraph 3 of the Constitution of Yugoslavia:

"A Yugoslav citizen may not be deprived of his citizenship, deported from the country or extradited to another State."

Article 66 of the Constitution of Yugoslavia:

"Aliens in the Federal Republic of Yugoslavia shall enjoy the freedoms and the rights and duties laid down in the Constitution, federal law and international treaties.

"An alien may be extradited to another State only in cases provided for under international treaties which are binding on the Federal Republic of Yugoslavia.

"The right of asylum shall be guaranteed to foreign citizens and stateless persons who are being persecuted for their advocacy of democratic views or for participation in movements for social or national liberation, for the freedom and for the rights of the human personality, or for scientific or artistic freedom."

Article 70 paragraphs 1 and 2, of the Criminal Law of Yugoslavia:

"A court may pronounce expulsion from the territory of the Federal Republic of Yugoslavia to an alien for a period ranging from 1 to 10 years or for ever.

"In assessing whether to pronounce the measure mentioned in paragraph 1 of this article the court shall take into account the motives behind the criminal offence, the manner of its commission and other circumstances pointing to the undesirability of the alien's further stay in the Federal Republic of Yugoslavia.

"The agencies of government administration, in particular the court, the agencies of the police and the Federal Ministry for Foreign Affairs, shall have jurisdiction in connection with the provisions of this article of the Convention."

Article 4

45. In addition to the already quoted constitutional provisions, in particular those set out in articles 22 and 25 of the Constitution, as well as legal arrangements, in particular those of articles 189, 190 and 191 of the Criminal Law of Yugoslavia and article 10 of the Law on Criminal Procedure, we here wish to also point to the following provisions of the Law on Criminal Procedure:

Article 218, items 7 and 8:

"Investigations shall be conducted in such a manner as to fully respect the personality of the defendant.

"The use of force, threats or similar means with a view to obtaining a statement or a confession from the defendant shall be prohibited."

Article 259, paragraph 3:

"Medical interventions or the giving to the defendant or a witness medicaments so as to affect their will in making statements shall not be allowed."

46. Internal regulations contain further elaboration of the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

47. The criminal legislation of Yugoslavia sanctions as punishable any aiding and abetting of criminal offences that are the subject of this report.

Article 5

48. The basic principles of the validity of the Yugoslav criminal legislation are regulated by article 104 of the Criminal Law of Yugoslavia:

"The Yugoslav criminal legislation shall be valid for anyone who commits a crime in the territory of the Federal Republic of Yugoslavia. The Yugoslav criminal legislation shall also be valid for anyone who commits a criminal offence on a domestic shipping vessel, regardless of where the vessel was at the time of the commission of such an offence. The Yugoslav criminal legislation shall also be valid for anyone who commits a criminal offence in a domestic civilian aircraft while in flight or a military aircraft regardless of where the aircraft was at the time of its commission."

49. Apart from this, the criminal legislation of Yugoslavia shall also be valid for anyone who commits abroad a criminal offence falling within the group of criminal offences against the constitutional order and security of the Federal Republic of Yugoslavia. The criminal legislation of Yugoslavia is likewise applicable to citizens of the Federal Republic of Yugoslavia when they commit any other criminal offence abroad, except those from the group of criminal offences against the constitutional order and security of the Federal Republic of Yugoslavia, if found in the territory of the Federal Republic of Yugoslavia or extradited to it.

50. The criminal legislation of Yugoslavia shall further be applicable to any alien who commits a criminal offence affecting the Federal Republic of Yugoslavia or any of its citizens outside the territory of Yugoslavia even when the offences concerned do not fall into the group of criminal offences against the constitutional order and security of the Federal Republic of Yugoslavia, and when such a person is found in the territory of the Federal Republic of Yugoslavia or extradited to it.

Article 6

51. With regard to this article of the Convention, apart from the provisions of the Law on Criminal Procedure relating to: a complaint about a criminal offence (arts. 148-181), measures to ensure the defendant's presence (arts. 182-205) and investigative activities (arts. 206/260), which have already been discussed at length in this report, we point here in particular to articles 522 and 523 of the Law on Criminal Procedure. According to the provisions of these two articles, if a criminal offence is committed in the territory of Yugoslavia by an alien with residence in a foreign country, then all criminal documents may be ceded to that State for the purpose of criminal prosecution and trial, if that State has nothing against it. The decision to cede the documents shall be taken by the public prosecutor prior to opening the investigation or by the investigating judge in the course of investigation, or by the court chamber prior to the opening of the main hearing. To cede the documents may be allowed in respect of criminal offences punishable by up to 10 years in prison and in respect of traffic offences. If the injured party is a Yugoslav citizen, the ceding of documents shall not be allowed if he expresses himself against it. If the defendant is detained, the State involved shall be requested to inform within 15 days whether it intends to prosecute or not. In practice, this most often applies to traffic offences.

52. A foreign country may likewise request that Yugoslavia prosecute a Yugoslav citizen or person residing in Yugoslavia and in doing so address the relevant documents to the competent public prosecutor in whose territory the said person is residing.

Article 7

53. We have mentioned on a number of occasions in this report the main constitutional and legal provisions governing the equality of all before the law and the applicability of the Yugoslav criminal legislation to all who have committed a criminal offence in the territory of the Federal Republic of Yugoslavia. Apart from the earlier quoted constitutional arrangements

(art. 17 para. 3 and art. 66 paras. 1 and 2 of the Constitution), an important principle in the field of extradition is that the extradition of defendants or of convicts is requested and effected pursuant to the provisions of the Law on Criminal Procedure, unless otherwise regulated by international treaties.

54. The issue of extradition of defendants and convicts is regulated by the Law on Criminal Procedure (arts. 524-540). The main extradition requirements are the following: that the person whose extradition is requested is not a citizen of Yugoslavia; that the offence for which extradition is requested was not committed in the territory of Yugoslavia, against it or against any of its citizens; that the offence for which extradition is requested is a criminal offence both under domestic law and under the law of the State in which it was committed; that under the domestic law the criminal prosecution has not fallen under the statute of limitations or that the execution of the punishment has not fallen under the statute of limitations before the alien was detained or the defendant interrogated; that the alien whose extradition is requested has not already been sentenced for the same offence by a domestic court or that a domestic court has not acquitted him for the same offence in a legally binding decision or that no criminal proceedings have been instituted against the alien on account of the same offence committed against Yugoslavia; that the legal identity of the person whose extradition is requested has been established and that there is a sufficient body of evidence to serve as the grounds for the assumption that the alien whose extradition is being requested has committed a particular criminal offence or that there is a binding court decision in that connection.

55. The procedure for the extradition of accused or convicted aliens is instituted at the request of a foreign State. The request should be appropriately documented and submitted through diplomatic channels. Extradition of an alien is prohibited if the alien enjoys the right of asylum in Yugoslavia and/or if he is held responsible for political or military criminal offences (article 533, item 2, of the Law on Criminal Procedure).

Article 8

56. Extradition (as per articles 524-540 of the Law on Criminal Procedure) is effected under the provisions of that law unless otherwise stipulated by an international treaty. In Yugoslavia bilateral agreements on extradition, signed with the following countries, are in force: Albania, Algeria, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iraq, Italy, Mongolia, Netherlands, Poland, Romania, Russian Federation, Slovakia, Spain, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Article 9

57. Provision of international criminal-legal assistance is regulated by the Law on Criminal Procedure (arts. 517-523) and is carried out pursuant to the provisions of this Law, unless otherwise stipulated by an international treaty. In Yugoslavia bilateral agreements regulating the provision of legal assistance in criminal matters are in force with the following countries: Albania, Algeria, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, France,

Germany, Greece, Hungary, Iraq, Italy, Mongolia, Netherlands, Poland, Romania, Russian Federation, Slovakia, Spain, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Article 10

58. In addition to pointing continually to the constitutional and legal provisions banning torture and ill-treatment or degrading treatment and punishment, the competent authorities conduct frequent checks and analyse the behaviour of the members of the police and the army, medical personnel, as well as the persons discharging public functions or those who are in contact with detainees or prisoners. For example, the personnel of the Ministry of the Interior of the Republic of Serbia is acquainted with and informed about the ban on ill-treatment or behaviour involving certain elements of torture in two ways: by means of professional education, training and additional training and by means of everyday work and treatment. In the course of education at the secondary and post-secondary schools for internal affairs and at the Police Academy, at seminars and courses, particular attention is paid to professional training aimed at correct and legal treatment, especially in the case of the use of coercive measures and certain other powers. In addition, all employees of this Ministry, as part of their compulsory professional education, receive additional training in correct and legal treatment and use of powers. The employees of this Ministry are acquainted with all abuses upon the completion of the relevant disciplinary or criminal procedures for the sake of prevention and control of such practices. Further to this, when allocating tasks, chief officers keep giving the necessary instructions on a daily basis.

59. We take this opportunity to point as well to the republican laws and by-laws regulating the conduct of officials towards detainees. Namely, officials empowered to use coercive means may only do so under precisely prescribed conditions. Such officials must take an appropriate professional exam and are checked constantly and directly in relation to their knowledge regarding the use of these powers. Apart from individual and rather rare cases of overstepping of these powers in the use of coercive means, as is also the case with police officers, there have not been any cases of torture and/or ill-treatment, or degrading treatment and punishment of detainees.

Article 11

60. The practices relating to interrogations have already been dealt with in this report and we shall therefore discuss here the legal framework for the keeping and treatment of arrested, detained or incarcerated persons, as well as the practical arrangements.

61. The relevant republican laws regulating the execution of criminal sanctions lay down the right of convicted, detained and the criminally punished persons to receive humane treatment and be treated in a manner which ensures respect for their personality and dignity and maintains their physical and mental health. The convict is treated in a manner which is in harmony with his personality to the maximum possible extent while due account is given to the achieved degree of his re-education and resocialization. Attempts are made to develop a feeling of personal responsibility in the convict and to encourage him to re-educate himself.

62. The accommodation of convicts is in compliance with hygienic requirements and the premises are heated. Each convict has at least 8 m^2 of space in the premises where they are accommodated. Medical check-ups are a regular practice as well as checks of food and water.

Article 12

63. All basic rules of conduct of the competent authorities in terms of their obligation to open an urgent and impartial investigation as well as to carry out investigating practices are regulated in the Law on Criminal Procedure (arts. 206-260), as has already been explained in this report.

Article 13

64. The right of appeal is a constitutional right. The Constitution stipulates that everyone shall be guaranteed the right of appeal or any other legal remedy against a decision concerning his rights or his legal interests. The use of appeal as a legal remedy in criminal affairs is regulated in the Law on Criminal Procedure (arts. 359-399).

65. The basic principles the court follows in connection with an appeal are as follows: an appeal is as a rule made against a first-instance judgement (other possibilities include an appeal against a ruling, against a second-instance judgement as well to the Federal Court); an appeal is to be submitted by an authorized person as a rule within 15 days from the day of the communication of the judgement; a duly made appeal postpones the execution of a judgement; an appeal must contain an elaborated basis for the refutation of the judgement (relevant violations of the provisions of the Criminal Procedure Code, a violation of the Criminal Code, incorrect or incomplete facts); when acting upon an appeal, the court faces the ban reformatio in pejus.

66. With regard to the protection of the right to submit an appeal, we wish to point first of all to the general commitment set out in the Constitution to the effect that the freedoms and rights recognized and guaranteed by the Constitution, including the right of appeal, enjoy court protection. The competent authorities, the police in particular, are also obliged to provide physical protection to citizens, especially in cases when they establish that persons who have submitted an appeal or made a statement have been subjected to threats, intimidation and the like.

Article 14

67. Article 27, paragraph 4, of the Constitution stipulates the following: "A wrongfully convicted or wrongfully detained person shall be entitled to rehabilitation and to compensation for damages from the State, and to other rights as envisaged by federal law."

68. The Constitution further stipulates in article 123 the following:

> "Everyone shall be entitled to compensation for damages sustained as a result of unlawful or improper actions of an official of a State agency or organization which exercises public powers, in conformity with the law.

"The State shall be obliged to pay compensation for damages.

"The injured party shall have the right, in accordance with the law, to demand compensation directly from the individual responsible for the damage."

69. In addition to the above constitutional provisions, one of the chief principles of the Law on Criminal Procedure is that whoever has been wrongfully convicted of a criminal offence or wrongfully detained shall be entitled to rehabilitation, to compensation for damages and to other rights spelled out by law. This principle is reflected in the provisions of the Law on Criminal Procedure (arts. 541-549) which lay down unequivocally that a person is entitled to compensation for damages on account of any mistake or illegal work of State agencies. In such cases the provisions of the Law on Criminal Procedure (art. 546) and the Criminal Code of Yugoslavia (art. 91) further envisage the right to rehabilitation as well.

Article 15

70. We take this opportunity to point once more to the provisions of article 25, paragraph 2 of the Constitution and article 190 of the Criminal Code which were referred to earlier in this report. A ban on the extortion of statements from the defendant, witnesses, expert witnesses and others as well as a ban on the use of such evidence is also envisaged by republican laws (article 65 of the Criminal Law of Serbia and article 47 of the Criminal Law of Montenegro). The same subject is covered by the Law on Criminal Procedure (in art. 218, item 8) which has already been cited in this report.

71. Any extorted statement may be used, in accordance with the general principles of Yugoslav criminal legislation, only as the basis for the laying of charges by anyone from whom a statement has been extorted and who may on that basis sue the official who has extorted the statement.

Article 16

72. Any adoption of regulations, documents or general or individual enactments introducing cruel, inhuman or degrading treatment or punishment shall be in contravention not only of the Constitution and the law but of the overall nature and spirit of the Yugoslav legislature and the legal system as a whole. This cannot happen even by means of a "play on words" whereby the existing terms would be replaced by certain other words. In any case, the existing criminal legislation of Yugoslavia never makes any mention of the term "torture", regulating and laying down instead protection against torture and ill-treatment, i.e. degrading treatment and punishment.

73. The long practice of all competent agencies in Yugoslavia (the courts, agencies of government administration, the police) shows that there has not been any ill-treatment, i.e. acts involving certain elements of torture, but that there have only been individual cases of overstepping of powers and that in such cases appropriate legal and sub-legal measures have been undertaken by the said agencies.

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